

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DEVIN DESHUN GLENN §
v. § CIVIL ACTION NO. 6:05cv284
CHRISTOPHER MARTINEZ, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Devin Glenn, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the complaint, the Magistrate Judge issued a Report on October 24, 2005, recommending that the lawsuit be dismissed. The Magistrate Judge noted first that Glenn had failed to respond to an order to correct his application for leave to proceed *in forma pauperis* and had failed to apprise of the Court of his current mailing address. The Magistrate Judge accurately stated that this provided sufficient basis to dismiss the lawsuit without prejudice for failure to prosecute under Rule 41(b), Fed. R. Civ. P.

However, the Magistrate Judge also observed that Glenn's lawsuit challenged the validity of his conviction, and so he must seek relief first through habeas corpus, rather than in the form of a Section 1983 lawsuit. The Magistrate Judge therefore recommended that Glenn's lawsuit be dismissed with prejudice as to the refiling of a Section 1983 lawsuit challenging the validity of his conviction and seeking release or a reduction of his sentence, until such time as the prerequisites of *Heck v. Humphrey*, 114 S.Ct. 2364 (1994) are met. The Magistrate Judge also recommended that

this dismissal be without prejudice to Glenn's right to seek relief from his conviction through any lawful means, including but not limited to state or federal applications for the writ of habeas corpus.

A copy of the Magistrate Judge's Report was sent to Glenn at his last known address, return receipt requested, but no objections thereto have been received; accordingly, Glenn is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

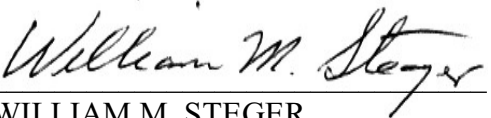
The Court has examined the Plaintiff's pleadings, the Report of the Magistrate Judge, and all documents and records in the case. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of a Section 1983 lawsuit challenging the validity of his conviction and seeking release or a reduction of his sentence, until such time as the prerequisites of Heck v. Humphrey are met. Such dismissal is without prejudice to Glenn's right to seek relief from his conviction through any lawful means, including but not limited to state or federal applications for the writ of habeas corpus, and without prejudice to Glenn's right to refile this lawsuit upon the meeting of the Heck preconditions. It is further

ORDERED that any and all motions which may be pending in this lawsuit are hereby DENIED.

SIGNED this 9th day of November, 2005.


WILLIAM M. STEGER
UNITED STATES DISTRICT JUDGE